

(1981) 12 RAJ CK 0011

In the Rajasthan High Court

Case No : Civil Second Appeal No. 637 of 1971

Rajasthan State Electricity Board

APPELLANT

Vs

Bhanwar Singh and Another

RESPONDENT

Date of Decision : 03-12-1981

Acts Referred:

Citation : (1981) WLN 364

Hon'ble Judges : S.K. Mal Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Mal Lodha, J.—By judgment dated April 29, 1971, the learned Civil Judge, Bikaner, confirmed the judgment and decree dated May 30, 1970, of the Munsif, Bikaner, who decreed the plaintiff-respondent's suit for declaration etc. The Rajasthan State Electricity Board questions the correctness of the aforesaid judgment.

2. Plaintiff-respondent No. 1 joined the service of the former State of Bikaner on November 23, 1947, in its Electrical Department. After integration of the Bikaner State in Rajasthan, the case of the plaintiff is that he became an employee of the State of Rajasthan on April 1, 1951. He became Helper-1, in the grade of 40-2-60 on January 1, 1955. The Rajasthan State constituted the Rajasthan State Electricity Board under the Indian Electricity Act, 1910 (for short "the Act" herein), in the year 1957. Notification dated February 12, 1958 was issued u/s 78A of the Act by which the services of the employees of the Government of Rajasthan Electricity Department were provisionally transferred to the Rajasthan State Electricity Board (which will hereinafter for the sake of brevity be referred to as the Board). The Board was required to make Regulations and to take options of the employees. That was not done until the institution of the suit. 3. The plaintiff applied for a post of Technician in Electrical Engineering, to the Jodhpur Polytechnic. He was selected. He was relieved from the State Services on April 19, 1960. He joined the new assignment with the Jodhpur Polytechnic

from November 20, 1960. It appears that the post of Technician in the Jodhpur Polytechnic was abolished. After the abolition of the post of technician in the Polytechnic, the plaintiff was absorbed by the Board by issuing a fresh appointment on February 28, 1962, in the scale of 60-4-80-EB-5-100.

4. The plaintiff has stated that after the abolition of the post, he should have been reverted to his parent Department i.e. Rajasthan State; Electricity Board where he had a lien. As the Board gave him fresh appointment on February 28, 1962, the plaintiff has alleged that this is illegal, ultra-vires & without jurisdiction as the fresh appointment order issued by the Board would effect the length of service, gratuity, grade increment and his fixation in the revised pay scale. He, therefore, instituted the suit on February 6, 1967, praying therein that a declaration may be granted" that he is entitled to be taken back on the post on which he was working when he joined the Jodhpur Polytechnic and should also be awarded a sum of Rs. 1248.08 p. by way of difference in pay etc.

5. The suit was contested by the Board, inter alia, on the ground that the services of the plaintiff came to an end when he was selected for appointment in the Jodhpur Polytechnic and that he was given a fresh appointment after the abolition of the post in the Polytechnic. The claim of the plaintiff for lien was also denied and it was submitted on behalf of the Board that he had no lien on the post on which he was working previously.

6. Learned Munsif framed seven issues inclusive of the relief. By judgment dated May 13, 1972, he granted a declaration to the plaintiff as prayed by him and held that he is entitled to get pay, pay-scale, promotion fixation leave, P.F. benefits etc. attached as service conditions with that post. He also held that he is entitled to the difference of salary due to him had he been reverted to his original post.

7. Aggrieved, the Board filed an appeal. Learned Senior Civil Judge, Bikaner, dismissed the appeal and recorded the following findings vide his judgment dated April 29, 1971:

(i) that the plaintiff had a lien with the State Government on a post equivalent to Helper-I. It was a matter of adjustment between the State Government and the R.S.E.B. to post him with the State Government or on deputation with the R.S.E.B. As he was taken on duty by the R.S.E.B. it is liable to pay the amount of difference of pay etc.

(ii) that the finding of the lower court is altered to this extent that the plaintiff had lien to the post equivalent to Helper-I, in the State Government and that this change would not affect the liability of the Board and the State Government to pay the amount due.

8. Being dissatisfied with the Appellate judgment and decree dated April 29, 1971, of the Senior Civil Judge, Bikaner, the Board has lodged this second appeal.

9. The plaintiff-respondent has not appeared despite the service of summons on him on October 13, 1972.

10. I have Heard Mr. Sudesh Gupta, appearing for Mr. H.P. Gupta, learned Counsel for the appellant.

11. The only contention raised by Mr. Sudesh Gupta is that the plaintiff had no lien and that as fresh appointment was given by the Board after the abolition of the post in the Jodhpur Polytechnic, the learned Senior Civil Judge, committed a serious error of law in holding that the plaintiff had a lien of a post equivalent to Helper-I and, as such, the Board is liable to pay the amount of difference of pay etc.

12 It appears from the Officer Order No. JUPOL/Estt/Per-1/60/61 13 dated November 9, 1960, that the plaintiff who was Helper-I, Workshop, Local Supply Section, Rajasthan State Electricity Board, Bikaner, was selected by the Rajasthan Public Service Commission, vide their letter dated October 3, 1960, and was appointed as Technician in Electrical Engineering at the Jodhpur Polytechnic, Jodhpur on basic pay of Rs. 80/-per month in the grade of No. 80-5-120-EB-5-175 plus usual allowances on one year's probation with effect from the date of taking over charge.

13. After this, vide Officer Order of the Executive Engineer of the Board of Rajasthan State Electricity Board, Bikaner Division, Bikaner, he was relieved on November 19, 1960 (afternoon) to join the new assignment. By order dated January 31, 1961, of the Director of Technical Education, Rajasthan, Jodhpur, the plaintiff (technician in Electrical Laboratory of the Polytechnic) was reverted to his parent Department i.e. R.S.E.B. Bikaner with effect from the date he was relieved from that office. It was stated in the office order dated February 8, 1961, that he must join immediately on the post of Helper-I, in the Rajasthan Electricity Board, Bikaner.

14. Thereafter, on February 28, 1962, the following office order was issued by the Superintending Engineer (PP) for Chief Engineer:

Office Order

Shri Bhanwar Singh, an Ex-Helper-I of the Rajasthan State Electricity Board, Bikaner, at present working as a technician in Electricity at Jodhpur Polytechnic. Jodhpur, due to abolition of post technician in the office of Director of Technical Education, as intimated by him, is hereby appointed as Electrician Grade-II, in the scale of Rs. 60-4-80-EB-5-100 in the distribution division, R.S.E.B.

The appointment is a fresh appointment and he will not get any benefit of his past services and will not be paid any T.A. and D.A. for this purpose.

15. According to the Board after the selection of the plaintiff by Rajasthan Public Service Commission, he was appointed as a technician in the Electrical Engineering at the Polytechnic, Jodhpur, and was relieved on November 19, 1960. He worked there from November 1960 to February 1961. On the abolition of the post of the technician in the office of the Director of Technical Education, a fresh appointment order was given to the plaintiff as is evident by the office order

dated February 28, 1962 and. therefore, no question of lien arises.

16. In these circumstances, the question that cropped up for my consideration is whether the plaintiff had a lien.

17. Rule 15 of the Rajasthan Service Rules, (for short "the Rules") deals with lien and it provides that unless in any case it be otherwise provided in the Rules, a Government servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post.

18. Rule 16 of the Rules lays down that unless his lien is suspended under Rule 17 or transferred under Rule 19 a Government servant holding substantively a permanent post retains a lien on that post-

- (a) while performing the duties of that post;
- (b) while on foreign service or holding a temporary post, or officiating in another post;
- (c) during joining time on transfer to another post, unless he is transferred substantively to a post on lower pay, in which case his lien is transferred to the new post from the date on which he is relieved of his duties in the old post;
- (d) while on leave; and
- (e) while under suspension.

19. Rule 17 deals with the suspension of lien. The relevant portion of Rule 17 for the present purpose reads as follows:

(a) Government shall suspend the lien of a Government servant on a permanent post which he holds substantively if he is appointed in a substantive capacity-

- (i) to a tenure post; or,
- (ii) to a permanent post outside the cadre on which he is borne;
- (iii) provisionally to a post on which another Government servant would hold a lien had his lien not been suspended under this rule.

(b) Government may, at their option, suspend the lien of a Government Servant on a post which he holds substantively if he is deputed out of India or transferred to foreign service, or in circumstances not covered by (a) of this rule, is transferred, whether in a substantive or officiating capacity, to a post in another cadre, and if in any of these cases there is reason to believe that he will remain absent from the post on which he holds a lien for a period of not less three years.

20. Rule 18 of the Rules deals with termination of lien:

(a) A Government Servant's lien on a post may in no circumstances be terminated, even with his consent if the result will be to leave him without a lien

on a suspended lien upon a permanent post.

(b) In a case covered by Sub-clause (ii) of Clause (a) of Rule 17 the suspended lien may not, except on written request of the Government servant concerned be terminated while the Government Servant remains in Government service.

21. It is clear that the plaintiff was appointed as a technician in Electrical Engineering at the Polytechnic on one year's probation with effect from the date of taking over charge. This order is dated November 9, 1960. He was relieved on November 19/1960 (afternoon) to joint the new assignment. The post was abolished and in consequence thereof by the officer-order dated February 8, 1961, he was ordered to be reverted to the parent Department i.e. R.S.E.B. Bikaner, with effect from the date he was relieved form that office. He was asked to join immediately to the pot of Helper-I in the R.S.E.B., Bikaner.

22. It is not in dispute that the plaintiff was an employee of the former State of Bikaner and that he was provisionally deputed to the Rajasthan State Electricity Board. It is further not in dispute that any option was exercised by the plaintiff. He was, of course selected to the post of a technician in the Jodhpur Polytechnic but that was on probation for one year. That post was subsequently abolished.

23. Keeping in view the aforesaid rules of the Rules, the learned Senior Civil Judge was right in holding that the plaintiff had a lien with the State Service and that too on a post equivalent to Helper-I. The lien of the plaintiff could only be suspended if the conditions laid down under Rule 17 were satisfied or it could only be terminated in accordance with Rule 10 of the Rules. The conditions laid down in Rule 17 and 18 are not satisfied in the present case and, therefore, in view of the orders referred to above and the provisions of Rules 16, 17 and 18 principles propounded in Rajasthan State Electricity Board, Jaipur v. Mohan Lal and Ors. (1) and in Rajasthan State Electricity Board, Jaipur v. Shrikishan and Anr. (2), I am of the opinion that the learned Senior Civil Judge, did not commit any error when he held that the plaintiff had lien in the State Service on a post equivalent to Helper-I. As a result of this, no valid exception can be taken to the declaration and other reliefs granted by the Munsif, which were confirmed by the Senior Civil Judge, Bikaner, by her judgment dated April 29, 1971.

24. No other point survives for my consideration in this appeal

25. The result is that there is no merit in this appeal. It is accordingly dismissed. As no body has appeared on behalf of the plaintiff-respondent to oppose the appeals, there will be no order as to costs.